

307 KAR 7:010. Procedures and standards for certification and approval of eligibility.

RELATES TO: KRS 154.23-070

STATUTORY AUTHORITY: KRS 154.23

NECESSITY, FUNCTION, AND CONFORMITY: KRS 154.23-070 authorizes the Kentucky Economic Development Finance Authority to promulgate administrative regulations establishing procedures and standards for certification of qualified zones, and determination and approval of eligible companies and their projects. As staff to the authority, the Cabinet for Economic Development will accept applications and monitor the approved companies. This administrative regulation establishes the procedures and standards for: (a) certification of qualified zones; and (b) determination and approval for eligible companies and their projects.

Section 1. Definitions. (1) "Activation date" means a date established by an eligible company that begins the ten (10) year term of the agreement.

(a) The activation date for manufacturing companies shall be a date within a two (2) year period after final approval of the financing agreement.

(b) The activation date for service or technology companies shall be a date within a one (1) year time period after the date of final approval of the service and technology agreement.

(2) "Approved company" is defined in KRS 154.23-010(1).

(3) "Approved costs" is defined in KRS 154.23-010(2).

(4) "Assessment" is defined in KRS 154.23-010(3).

(5) "Authority" is defined in KRS 154.23-010(4).

(6) "Commonwealth" is defined in KRS 154.23-010(5).

(7) "Economic Development project" or "project" is defined in KRS 154.23(6).

(8) "Eligible company" is defined in KRS 154.23(7).

(9) "Final approval" is defined in KRS 154.23(8).

(10) "Financing agreement" is defined in KRS 154.23(9).

(11) "Inducements" is defined in KRS 154.23(10).

(12) "Kentucky Economic Opportunity Zone Act Application for Amendment of a Qualified Zone" means the application submitted by a county, urban-county government, or city of the first class to amend the boundary of a qualified zone.

(13) "Kentucky Economic Opportunity Zone Act Application for Certification of an Economic Opportunity Zone" means the application submitted by a county, urban-county government, or city of the first class to request certification of a qualified zone.

(14) "Kentucky Economic Opportunity Zone Act Application for Manufacturing Project" means the application submitted by an eligible manufacturing company seeking inducements under the Kentucky Economic Opportunity Zone Act, and includes the "Cabinet for Economic Development Economic Incentive Disclosure Statement".

(15) "Kentucky Economic Opportunity Zone Act Application for Service or Technology Project" means the application submitted by an eligible service or technology company seeking inducements under the Kentucky Economic Opportunity Zone Act, and includes the "Cabinet for Economic Development Economic Incentive Disclosure Statement".

(16) "KRS" means the Kentucky Revised Statutes, as amended from time to time.

(17) "Local government" is defined in KRS 154.23-010(11).

(18) "Manufacturing" is defined in KRS 154.23-010(12).

(19) "Preliminary approval" is defined in KRS 154.23-010(13).

(20) "Qualified employee" is defined in KRS 154.23-010(14).

(21) "Qualified statewide employee" is defined in KRS 154.23-010(15).

(22) "Qualified zone" is defined in KRS 154.23-010(16).

- (23) "Relocation costs" is defined in KRS 154.23-010(17).
- (24) "Rent" is defined in KRS 154.23-010(18).
- (25) "Service and technology agreement" is defined in KRS 154.23-010(19).
- (26) "Service or technology" is defined in KRS 154.23-010(20).
- (27) "Start-up costs" is defined in KRS 154.23-010(21).

Section 2. Eligibility Requirements for Qualified Zone. The authority shall certify each zone, in accordance with KRS 154.23-015, based upon the contents of the Kentucky Economic Opportunity Zone Act Application for Certification of an Economic Opportunity Zone submitted by a county, urban-county government, or city of the first class.

Section 3. Eligibility Requirements for Amendment to Qualified Zone Boundary. The authority may approve amendments to a qualified zone boundary, in accordance with KRS 154.23-020, based upon the contents of a Kentucky Economic Opportunity Zone Act Application for Amendment of a Qualified Zone submitted by a county, urban-county government, or city of the first class, in which the qualified zone is located.

Section 4. Decertification of Qualified Zone. The authority shall not give preliminary approval to a project in a decertified zone.

Section 5. Kentucky Economic Opportunity Zone Program. (1) Application process for manufacturing companies. A manufacturing company applying for an inducement under the Kentucky Economic Opportunity Zone Act shall file a Kentucky Economic Opportunity Zone Act Application for Manufacturing Projects with the authority. The following information and materials shall be submitted as part of the application:

(a) A letter from the eligible company setting forth the history of the business and providing a detailed description of the manufacturing project to supplement the items contained in the application. The letter shall include the following:

1. Dollar amount of the company's investment in the project;
2. Total number of full-time employees to be hired as a result of the project, including a statement that the eligible company shall hire at least ten (10) qualified employees;
3. Written evidence that a significant number of existing jobs in the Commonwealth will not be lost or adversely affected due to the proposed project, including:
 - a. A list of all known competitors to the project located in Kentucky; and
 - b. Reasons the proposed project will not adversely affect existing jobs in the Commonwealth;
4. Statement that the project could reasonably and efficiently locate outside the qualified zone and, but for the inducements offered by the authority, the eligible company would likely locate outside the zone; and
5. If the proposed project is an expansion, the identity of each qualified statewide employee employed by the company at the time the application is filed, listed by:
 - a. Name;
 - b. Employee identification or Social Security number;
 - c. Street address; and
 - d. Date of hire.

(b) A letter from the appropriate local elected official, either mayor or county judge executive, endorsing the project and acknowledging approval of the job development assessment fee, if applicable.

(c) General information about the eligible company, including company ownership.

(d) Identification of the eligible company's:

1. Attorney;
2. Primary bank;
3. Project lender;
4. Lessor, if applicable; and
5. Accountant.

(e) Itemization of estimated project costs

(f) Proposed project financing.

(g) A copy of the eligible company's financial statement for the most recent fiscal year end.

(h) The current number of jobs at the proposed project site.

(i) The projected number of new full-time and part-time jobs to be created at the project by the activation date.

(j) The projected total number of full-time and part-time jobs that will exist at the project site on the activation date.

(k) The number of jobs retained because of the economic development project.

(l) The number of managerial, technical, skilled, semiskilled and unskilled jobs, based on the level of specialized training required to perform the particular job competently, that will be created by the proposed project with the average hourly wage and average salary for each job category, as follows:

1. An "unskilled" job requires no specialized training to perform competently.

2. A "semiskilled" job requires forty (40) hours or less training to perform competently.

3. A "skilled" worker:

a. Possesses a certificate or degree from an accredited vocational-technical school, college or university;

b. Has been licensed independently in a specific occupation, and shall have a certificate or diploma in the job category in which he or she is employed; or

c. Has completed an apprenticeship as a requirement for being certified by a union.

4. A "managerial" job primarily involves supervising other employees of the company.

5. A "technical" job requires expertise or knowledge specific to the particular industry of the eligible company; even if the job also fits another category.

(m) For the ten (10) year term of the financing agreement, the projected annual:

1. Payroll;

2. Kentucky taxable income; and

3. Kentucky tax liability.

(n) Notice of the following fees to be paid by the eligible company:

1. A \$500 nonrefundable application fee, due and payable to the authority upon submission of the application;

2. An administrative fee of one-quarter (1/4) of one (1) percent of the total approved costs, for a minimum of \$1,000, due and payable upon execution of the financing agreement. If approved costs are finally determined to be greater, the administrative fee shall be increased accordingly; and

3. The legal fee for preparation of the financing agreement by the authority's counsel, payable upon execution of the financing agreement.

(o) A completed Economic Development Economic Incentive Disclosure Statement.

(2) Application process for a service or technology company. A service or technology company applying for an inducement under the Kentucky Economic Opportunity Zone Tax Credit Program shall file a Kentucky Economic Opportunity Zone Act Application for Service or Technology Projects with the authority. The following information and materials shall be submitted as part of the application:

(a) A letter from the eligible company setting forth the history of the business and providing a detailed description of the service or technology project to supplement the items contained in the application. The letter shall include the following:

1. Dollar amount of the company's investment in the project;
2. Total number of full-time employees to be hired as a result of the project, including a statement that the eligible company shall hire at least ten (10) qualified employees;
3. Written evidence that a significant number of existing jobs in the Commonwealth will not be lost or adversely affected due to the proposed project, including:
 - a. A list of all known competitors to the project located in Kentucky; and
 - b. Reasons the proposed project will not adversely affect existing jobs in the Commonwealth;
4. Statement that the project could reasonably and efficiently locate outside the qualified zone and, but for the inducements offered by the authority, the eligible company would likely locate outside the zone; and
5. If the proposed project is an expansion, the identity of each qualified statewide employee employed by the company at the time the application is filed, listed by:
 - a. Name;
 - b. Employee identification or Social Security number;
 - c. Street address; and
 - d. Date of hire.

(b) A letter from the appropriate local elected official, either mayor or county judge executive, endorsing the project and acknowledging approval of the job development assessment fee, if applicable;

(c) General information about the eligible company, including company ownership;

(d) Identification of the eligible company's:

1. Attorney;
2. Primary bank;
3. Lessor;
4. Project lender, if applicable; and
5. Accountant;

(e) Itemization of estimated project costs, including:

1. Annual rent of the building or the fair rental value if the building is being purchased;
2. Projected start-up costs as of the activation date, including the cost of furnishing and equipping the building for ordinary business functions, including:
 - a. Computers;
 - b. Nonrecurring costs of fixed telecommunications equipment;
 - c. Furniture;
 - d. Office equipment; and
 - e. Relocation costs.

(f) The current number of jobs at the project location, both full and part time;

(g) The projected number of new full-time and part-time jobs to be created at the project by the activation date;

(h) The total projected number of full-time and part-time jobs that will exist at the project site on the activation date;

(i) The number of jobs retained because of the economic development project;

(j) The number of managerial, technical, skilled, semiskilled and unskilled jobs, based on the level of specialized training required to perform the particular job competently, to be created by the proposed project and the average hourly wage and average salary for each job category. Job categories are described in subsection (1)(l) of this section.

(k) For the ten (10) year term of the service and technology agreement, the projected annual:

1. Payroll;
2. Kentucky taxable income; and
3. Kentucky tax liability.

(l) Whether the proposed project site will be owned or leased by the eligible company;

(m) Notice of the following fees to be paid by the eligible company:

1. A \$500 nonrefundable application fee, due and payable to the authority upon submission of the application;
 2. An administrative fee of one-tenth (.1) of one (1) percent of the total approved costs, for a minimum administrative fee of \$1,000, due and payable upon execution of the service and technology agreement. If approved costs are finally determined to be greater, the administrative fee shall be increased accordingly; and
 3. The legal fee for preparation of the service and technology agreement by the authority's counsel, payable upon execution of the service and technology agreement.
- (o) A completed Economic Development Economic Incentive Disclosure Statement.

Section 6. Approval Standards. In accordance with KRS 154-23-030, the authority may, by resolution, approve an eligible manufacturing or service or technology company after consideration of the application for the Kentucky Economic Opportunity Zone Tax Credit Program if the eligible company meets the requirements of the Act and relevant administrative regulations.

Section 7. Financing Agreement Contents. The authority may require the following information, as negotiated terms referenced in KRS 154.23-035(1), to be part of the financing agreement:

- (1) Annual, quarterly or monthly progress reports to the authority;
- (2) Annual, quarterly or monthly financial reports to the authority;
- (3) Annual certifications of debt service payments made by the eligible company; and
- (4) Access to the approved company's records.

Section 8. Service and Technology Agreement Contents. The authority may require the following information, as negotiated terms referenced in KRS 154.23-040(1), to be part of the service and technology agreement:

- (1) Annual, quarterly or monthly progress reports to the authority;
- (2) Annual, quarterly or monthly financial reports to the authority;
- (3) Annual certifications of rental payments referred to in KRS 154.23-040(3); and
- (4) Access to the approved company's records.

Section 9. Incorporation by Reference. (1) The following documents are incorporated by reference:

- (a) "Kentucky Economic Opportunity Zone Act Application for Certification of an Economic Opportunity Zone" (August 2000);
- (b) "Kentucky Economic Opportunity Zone Act Application for Amendment of a Qualified Zone" (August 2000);
- (c) "Kentucky Economic Opportunity Zone Act Application for Manufacturing Project", (August 2000), which includes the "Cabinet for Economic Development Economic Incentive Disclosure Statement" (August 2000); and

(d) "Kentucky Economic Opportunity Zone Act Application for Service or Technology Project" (August 2000), which includes the "Cabinet for Economic Development Economic Incentive Disclosure Statement" (August 2000).

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the offices of the Cabinet for Economic Development, Department of Financial Incentives, 500 Mero Street, 24th Floor, Frankfort, Kentucky 40601, (502) 564-7670, Monday through Friday, 8 a.m. to 4:30 p.m. (27 Ky.R. 1386; Am. 2128; eff. 2-15-2001.)